

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

BRUCE DOUGLAS MELLO,

Defendant and Appellant.

H033864

(San Benito County

Super. Ct. No. CR0702377)

A jury convicted defendant Bruce Douglas Mello of cultivating marijuana (Health & Saf. Code, § 11358) over his medical-marijuana defense (*id.*, § 11362.5, adopted by Initiative (Prop. 215) at the Nov. 5, 1996, General Election). On appeal, defendant contends, among other things, that the trial court erred by admitting evidence and instructing the jury over objection as to a numeric limit (6 mature or 12 immature plants) on the amount of marijuana a qualified patient may lawfully possess in order to assert the medical-marijuana defense. (*Id.* § 11362.77, added by Stats. 2003, ch. 875, § 2.) The People concede the issue, and we agree that the concession is appropriate. And the parties agree that defendant's secondary issues are moot. We therefore reverse the judgment and remand for retrial.

LEGAL BACKGROUND

“A statute enacted by voter initiative may be changed only with the approval of the electorate unless the initiative measure itself permits amendment or repeal without voter approval.” (*People v. Cooper* (2002) 27 Cal.4th 38, 44.) Proposition 215 did not

authorize the Legislature to amend its provisions without voter approval. And it did not specify a numeric limit on the amount of marijuana a qualified patient may lawfully possess in order to assert the medical-marijuana defense. Since Health and Safety Code section 11362.77 amends Proposition 215 to specify a numeric limit, that amendment is unconstitutional. The trial court therefore erred by admitting evidence and instructing the jury as to the numeric limit.

DISPOSITION

The judgment is reversed and the matter is remanded for retrial.

---

Premo, J.

WE CONCUR:

---

Rushing, P.J.

---

Elia, J.